

Owensby, et al. vs. City of Cincinnati, et al.  
October 21, 2003

DARREN VERESE SELLERS

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
 : (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
 :  
Defendants. :  
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Videotaped deposition of DARREN VERESE

SELLERS, witness herein, called by the plaintiffs  
for cross-examination, pursuant to the Federal Rules  
of Civil Procedure, taken before me, Wendy Davies  
Welsh, a Registered Diplomate Reporter and Notary  
Public in and for the State of Ohio, at the offices  
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &  
Walnut Centre, 105 East Fourth Street, Cincinnati,  
Ohio, on Tuesday, October 21, 2003, at 10:09 a.m.

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<p>1 APPEARANCES: Page 2</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. Helmer, Martins &amp; Morgan Co. LPA Suite 1900, Fourth &amp; Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 3672 Springdale Road Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Lynne Marie Longtin, Esq. Rendigs, Fry, Kiely &amp; Dennis 900 Fourth &amp; Vine Tower One West Fourth Street Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200</p> <p>15 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>17 Geri Hernandez Geiler, Esq. Assistant City Solicitor and Julie F. Bissinger, Esq. Chief Counsel Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>1 STIPULATIONS Page 4</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of DARREN</p> <p>4 VERESE SELLERS, witness herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p>
<p>1 APPEARANCES (Continued): Page 3</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus &amp; Marks, LLC 915 Cincinnati Club Building 30 Garfield Place Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 Also present:</p> <p>8 Richard W. Grubb, Videographer</p> <p>9 Lisa Damstrom, Law Clerk</p> <p>10 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>11 Mr. Roger Owensby</p> <p>12 Mrs. Brenda Owensby</p> <p>13 Mr. Shawn Owensby</p>	<p>1 INDEX Page 5</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins . . . . . 6</p> <p>4 Ms. Longtin . . . . . 78</p> <p>5 Mr. Martins . . . . . 80</p> <p>6 - - -</p> <p>7 EXHIBITS</p> <p>8 Deposition Exhibit 37 . . . . . 12</p> <p>9 Deposition Exhibit 38 . . . . . 23</p> <p>10 Deposition Exhibit 39 . . . . . 41</p> <p>11 Deposition Exhibits 40, 41 &amp; 42 . . . . . 41</p> <p>12 Deposition Exhibit 43 . . . . . 43</p> <p>13 Deposition Exhibit 44 . . . . . 50</p> <p>14 Deposition Exhibit 45 . . . . . 74</p> <p>15 Deposition Exhibit 46 . . . . . 74</p>

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<p style="text-align: right;">Page 50</p> <p>1 in his hand.</p> <p>2 Q. If he -- if -- if Mr. Owensby's laying</p> <p>3 face-down?</p> <p>4 A. Uh huh.</p> <p>5 Q. And somebody is pulling on the right arm,</p> <p>6 would -- do you recall whether or not that was</p> <p>7 causing Mr. Owensby's body to rotate onto the left,</p> <p>8 making getting the left shoulder out more difficult?</p> <p>9 A. I don't know. I don't know.</p> <p>10 Q. And as I understand it, when you arrived,</p> <p>11 and from what you saw, Mr. Owensby was not moving?</p> <p>12 A. No.</p> <p>13 Q. No, he was not moving?</p> <p>14 A. He was not moving.</p> <p>15 Q. Okay. You were asked in Jorg's trial and</p> <p>16 also at the grand jury whether or not the difficulty</p> <p>17 you had in getting the arm out was because of</p> <p>18 resistance or just body weight. Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And as I understand it, you don't</p> <p>21 know if -- if it was active resistance or simply the</p> <p>22 weight on the body?</p> <p>23 A. I don't know.</p> <p>24 Q. At the time that you were trying to get</p>	<p style="text-align: right;">Page 52</p> <p>1 Owensby was handcuffed you saw Officer Caton strike</p> <p>2 Mr. Owensby in the lower part of the back</p> <p>3 approximately three or four times?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Was this an open -- was this a fist, was</p> <p>6 it an open palm strike, do you know?</p> <p>7 A. I don't know for sure if it was open palm</p> <p>8 or if it was a fist, but he did hit him.</p> <p>9 Q. Did you say anything in response?</p> <p>10 A. To myself. I -- I kind of said it, but it</p> <p>11 wasn't loud enough for everybody to hear, and I'm</p> <p>12 like, "He's cuffed, what is -- what is -- the hell</p> <p>13 is he doing?" You know, that's the kind of -- kind</p> <p>14 of thing I said to myself.</p> <p>15 Q. And after Mr. Owensby was cuffed, also you</p> <p>16 heard Officer Caton say something to the effect of,</p> <p>17 Mace this mother fucker?</p> <p>18 A. "Mace this fucker."</p> <p>19 Q. And in response to that, Mr. Owensby's</p> <p>20 head was lifted up and he was Maced?</p> <p>21 A. No.</p> <p>22 Q. Was he Maced?</p> <p>23 A. He was Maced.</p> <p>24 Q. Did you see his head lifted up?</p>
<p style="text-align: right;">Page 51</p> <p>1 the left arm out of Mr. Owensby, was anybody</p> <p>2 exerting any weight on Mr. Owensby?</p> <p>3 A. No.</p> <p>4 Q. Did you ever --</p> <p>5 A. Caton was still back in this area here,</p> <p>6 but --</p> <p>7 Q. Okay.</p> <p>8 A. -- that's all I can remember.</p> <p>9 Q. Do you know if he was kneeling or -- or</p> <p>10 sitting on Mr. Owensby?</p> <p>11 A. Sitting, he wasn't. Kneeling, he may have</p> <p>12 been. Yes, he --</p> <p>13 Q. Okay.</p> <p>14 A. -- was kneeling.</p> <p>15 Q. And as to Officer Jorg, do you know where</p> <p>16 Officer Jorg was when you were trying to pull the</p> <p>17 left arm out?</p> <p>18 A. No.</p> <p>19 Q. You don't know?</p> <p>20 A. Huh-uh.</p> <p>21 Q. At any time did you see Officer Jorg</p> <p>22 kneeling on any portion of Mr. Owensby?</p> <p>23 A. No.</p> <p>24 Q. As I understand your testimony, after Mr.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. No.</p> <p>2 Q. Who Maced him?</p> <p>3 A. Officer Hunter.</p> <p>4 Q. How did Hunter, if -- if you know, do you</p> <p>5 know how Officer Hunter Maced him if his face --</p> <p>6 well, how his face was situated?</p> <p>7 A. His face was situated in kind of this --</p> <p>8 in this fashion here.</p> <p>9 Q. Down?</p> <p>10 A. Yes.</p> <p>11 Q. Face-down?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. Do you know how Hunter Maced him if</p> <p>14 his face was down?</p> <p>15 A. Hunter -- do you mean in the method he did</p> <p>16 or --</p> <p>17 Q. Yes.</p> <p>18 A. He just went across like this on the side</p> <p>19 of his face here with one burst of -- of chemical</p> <p>20 irritant and that was it.</p> <p>21 Q. And as I recall from looking at your</p> <p>22 testimony, there was -- you -- you did not observe</p> <p>23 any reaction by Mr. Owensby?</p> <p>24 A. No.</p>

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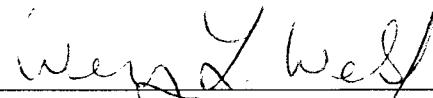
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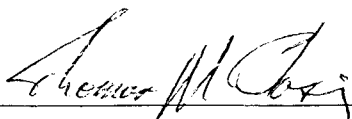
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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DARREN VERESE SELLERS, deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
\_\_\_\_\_  
Wendy L. Welsh, Court Reporter

Sworn to before me this 8<sup>th</sup> day of December, 2003.

  
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Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.